SUMMIT GAS SYSTEMS PTE. LTD.

v.

PHUA SOO KHOON

HIGH COURT, SINGAPORE
FA CHUA J
[SUIT NO. 3381/81]
22 FEBRUARY 1985

CONTRACT: *Claim for return of cylinders - Whether enforceable - Whether original obligation negated or varied - Damages - Value of cylinders - Whether the market value at time of filing of writ or of judgment.*

The plaintiffs' claim against the defendant was for the delivery up of a number of cylinders or their nett value. The cylinders had been obtained by the defendant under an agreement by which the defendant was appointed an agent for the sale of gas cylinders of the plaintiffs. On the defendant not achieving the quota of sales agreed upon, the plaintiffs demanded the return of the cylinders. The defendant failed to return the cylinders or pay their cost, claiming that an Equipment Loan and Undertaking agreement with the plaintiffs negated his duty to return the empty cylinders once he ceased to be a dealer, that he was obliged to return the cylinders only if he had been in breach of that agreement.

Held:

[1] The rights of the plaintiffs and the obligations of the defendant under the original agreement were in no way affected or varied by the Equipment Loan and Undertaking agreement.

[2] The value of the unreturned cylinders should be based on their market value at the date of the filing of the writ.

[Judgment for plaintiffs.]

JUDGMENT

FA Chua J:

The plaintiffs' claim against the defendant is for the delivery up of 55314.5 kilogram and 33 51 kilogram "Solar Gas" cylinders or payment of $27,843.80, their nett value after deducting the deposits paid by the defendant.

> (24) The Dealer hereby agrees that it shall be responsible for all loss of or damage to the Company's property including but not limited to cylinders arising from the negligence, neglect or default of the Dealer's servants or agents.
>
> (28) The Dealer hereby agrees with the Company that its mode of operation in accordance with this Agreement shall be carried out in accordance with the terms set out in the Schedule hereto.

And the following terms in the Schedule to the said Agreement:

> 4. All cylinders and other equipment shall remain the property of the Company and the Dealer shall not use any of the cylinders or other equipment in any manner which may adversely or prejudicially affect the rights of the Company in relation thereto.

5. The Dealer shall at its own cost and expense be responsible for the collection and return of empty cylinders to the Company's warehouses at Singapore or a place or places designated by the Company.

Sometime in 1979 the defendant's sales quota as agreed in Clause 3 kept on falling and the plaintiffs warned the defendant to pick the sales or return the empty cylinders otherwise the agreement would be terminated. The defendant through his solicitors replied on 23 May 1980, (Ex. P6) that the defendant intended to carry on as the plaintiffs' agent in the supply of gas and that the defendant would be responsible for all cylinders that he had received from the plaintiffs. The plaintiffs replied on 26 May 1980, stating that they were only prepared to allow the defendant to continue to act as their dealer provided he could meet the quota of monthly sales. They also pointed out that as the cost of cylinders was increasing rapidly they could not afford to allow the defendant to hold back their cylinders without generating reasonable sales and sought a written undertaking from the defendant that he would meet the sales quota (Ex. P7). When there was no response from the defendant the plaintiffs wrote to the defendant's solicitors asking for an early reply and stating that since the defendant had not been purchasing any gas from them since March, 1980, they were not willing to wait for the defendant's reply indefinitely and warning that if they did not receive a reply within two weeks they would instruct their solicitors to take necessary action to recover back their cylinders (Ex. P8). On 4 July 1980, the defendant's solicitors replied that the defendant intended to continue as agent and would try his utmost to meet the sales quota (Ex. P9). On 7 July the plaintiffs replied that the defendant's undertaking was vague and that the defendant should be able to give a firm commitment. The plaintiffs stated that since the defendant had not been active for sometime they could at most allow the defendant six months to build up his sales quota and if at the end of that period the defendant failed to achieve the quota they would terminate the defendant's dealership agreement without further notice (Ex. P10). On 15 July 1980, the defendant's new solicitors replied that the defendant accepted the terms contained in the plaintiffs' letter of 7 July and that the defendant would within the period of six months meet the sales quota. On 18 August 1980, the plaintiffs wrote to the defendant's solicitors stating that they would give to the defendant a letter to the Building Control Division for inspecting the defendant's vehicle and issuing of licence provided the defendant returned to them the attached letter duly endorsed by the defendant (Ex. P12). The said letter was duly endorsed and returned to the plaintiffs (Ex. P13). The said letter reads:

18 August 1980

GLM: 055/80

Messrs Yong Huat Electric Contractors
4162 North Bridge Road
Block 9
Singapore

Dear Sir:

Subject: Re **Dealership Agreement dated 21 March 1972**

We refer to the Dealership Agreement dated 21 March 1972 between us. We have notified you previously that you have been in default under the aforesaid Agreement by your failure to meet the quota specified therein.

However we are prepared not to terminate the aforesaid Agreement at the present time and grant you a grace period of 6 months from September 1980 to meet the quota of monthly sales of 280 x 14.5 kg and 17 x 51 kg cylinders. We reserve our right to terminate the aforesaid Agreement forthwith in the event of your failure to achieve the said quota by the end of the grace period or your failure to maintain the said quota thereafter.

Kindly indicate your agreement to and confirmation of the above terms by signing and returning the duplicate copy of this letter.

Very truly yours
SUMMIT GAS SYSTEMS PTE. LTD.
Sgd. Koh Bok Seng

We agree to and confirm the above terms.

Sgd. Yong Huat Electric Contractors.

The defendant was duly reinstated as a dealer but the defendant did not meet the monthly sales quota. On 15 April 1981 the plaintiffs' solicitors wrote to the defendant terminating immediately the said Agreement and requesting the defendant to return all the empty Solar Gas Cylinders which the defendant had obtained from the plaintiffs (Ex. P14). Another demand for the return of the empty cylinders or payment, of their costs was made on 29 August 1981 (Ex. P18). The defendant failed to return the cylinders or pay their costs.

The said Agreement is admitted by the defendant. The defendant does not question the ownership of the cylinders. He concedes they are the property of the plaintiffs and that they were handed to his custody.

The defendant's duty to collect and return the empty cylinders is clearly set out in para. 5 of the Schedule to the said Agreement. He had been collecting and returning the empty cylinders to the plaintiffs from 1972 to 1980. On the termination of the said Agreement by the plaintiffs, demand had been made on the defendant to return the cylinders and he had refused to collect and return the cylinders.

The defendant says there is an Equipment Loan and Undertaking agreement which a customer has to sign giving certain undertakings to the plaintiffs and agreeing to do certain things. The defendant submits that this Loan and undertaking agreement has negated his duty to collect and return the empty cylinders under the said Agreement when he ceases to be a dealer.

The defendant in all probability was given the Equipment Loan and Undertaking agreement forms to use when he was first appointed dealer, but the plaintiffs says that the use of these forms was discontinued after 1975 and the dealers were told not to use them. The defendant, on the other hand, denies that the forms were no longer in use and says that the signed forms were all returned to the plaintiffs. The defendant's evidence on this matter is contradictory and unreliable and I do not accept it.

It is submitted by the defendant that the said Agreement and Equipment Loan and Undertaking agreement should be read together. The defendant says that under Clause 11 of the Equipment Loan and Undertaking agreement the plaintiffs could only collect the gas cylinders from the customer if the customer has violated the terms and conditions or failed to pay his bill and even then forty-eight hours' written notice must be given. Furthermore Clause 4 provides that the customer is not to permit any person not authorised by the plaintiffs to remove the equipment which includes the cylinder. It is submitted that the

defendant is no longer authorised to remove the cylinders after the termination of the said Agreement. That is the reason why under Clause 26 (a) of the said Agreement it is provided that upon the termination of the said Agreement the defendant did not have to return the cylinders. The relevant provisions of Clause 26(a) read:

> Upon the termination of this Agreement for any reason whatsoever and at any time previous to such termination the Dealer shall at the request of the Company within thirty (30) days from the date of such request return to the Company in good condition fair wear and tear excepted all equipment **other than cylinders** consigned to the Dealer against or without deposit ...

The defendant submits that by the Equipment Loan and Undertaking agreement it is the duty of the customer to look after the cylinder.

The defendant further submits that Clause 28 of the said Agreement, being the only Clause referring to the Schedule, provides only the mode of operation of the dealer and therefore would not apply in the case of termination of the said Agreement.

I am unable to accept the submissions of the defendant. The Equipment Loan and Undertaking agreement signed by the customers could not in any way affect or vary the rights of the plaintiffs nor the obligations of the defendant under the said Agreement.

It is clear that under Clause 5 of the Schedule to the said Agreement that whenever a cylinder has become empty the defendant shall at his own cost and expense collect it back and return it to the plaintiffs. This obligation is a continuing one and does not come to an end when the said Agreement was terminated.

In order to secure the return of the cylinders several provisions are inserted in the said Agreement and the defendant himself has also been protected by collecting a deposit from his customers for every cylinder handed to their custody.

The defendant in the course of his dealings with the plaintiffs throughout the many years had always been collecting the empty cylinders from his customers and returning them to the plaintiffs. He clearly understood his obligations under the said Agreement. As I have said demand has been made on him to return the cylinders and he has refused to collect these cylinders which he had handed to his customers. It was his failure to collect, as he had admitted, that gave rise to an outstanding number of cylinders not returned to the plaintiffs by him before the said Agreement was terminated.

The defendant submits that the value of the unreturned cylinders should be based on the market value at the time of judgment. In my view it should be at the date of the filing of the writ, 17 September 1981.

There will be judgment for the plaintiffs in the sum of $27,843.80 and costs.

Also found at [1985] 1 CLJ 397